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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1684

SUPER TIRE ENGINEERING CO., SUPERCAP CORPORATION and A. ROBERT SCHAEVITZ,

Petitioners,

vs.

LLOYD W. McCORKLE, Commissioner of the Department of Institutions and Agencies of the State of New Jersey, et al.,

and

TEAMSTERS LOCAL UNION NO. 676, a/w INT'L. BHD. OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF ISSUES PRESENTED

1. Do the provisions of the Social Security Act governing the federal categorical assistance programs indicate a congressional intention to disqualify families which include strikers from receiving benefits even though they satisfy every express statutory condition of eligibility?

2. Is it appropriate to look to the general provisions of the National Labor Relations Act to find the intention of Congress concerning the payment of welfare to families which include strikers where the conditions of eligibility for the federal categorical assistance programs are set forth specifically and comprehensively in the Social Security Act?

COUNTERSTATEMENT OF THE CASE

On June 10, 1971, two affiliated New Jersey corporations, Super Tire Engineering Company and Supercap Corporation (referred to hereinafter as "Super Tire"), and their President and Chief Executive Officer, filed suit in the United States District Court for the District of New Jersey alleging that the employees of Super Tire were on strike and that many of the strikers were receiving public assistance under laws of the State of New Jersey. The complaint claimed, *inter alia*, that the payment of public assistance to strikers is contrary to the provisions of the Federal Social Security Act governing the Aid to Families with Dependent Children program (hereinafter "AFDC") (42 U.S.C. §601, *et seq.*) and that it conflicts with the provisions of the Labor Management Relations Act of 1947 guaranteeing free collective bargaining (29 U.S.C. §141, *et seq.*). The named defendants in the original complaint were the New Jersey Commissioner of Institutions and Agencies and the Director of the Division of Public Welfare, who are the administrative officials responsible for the State's welfare programs, and a county and municipal welfare official.* Subsequently, the collective bargaining representative for Super Tire's employees, Teamsters Local Union No. 676, was granted leave to intervene as a defendant.

The matter was brought before the District Court on June 24, 1971 on the motion of Super Tire for a preliminary injunction. On the return date the defendant State officials filed a motion to dismiss the complaint for failure to state a cause of action, which was granted.

An appeal was then taken by Super Tire to the Third Circuit Court of Appeals which, with Judge Gibbons dissenting, dismissed the appeal as moot because the strike out of which it arose had ended and directed the District Court to dismiss the complaint. *Super Tire Engineering Company v. McCorkle, et al.*, 469 F.2d 911 (3rd Cir. 1972).

Super Tire then filed a petition for writ of certiorari, which was g.anted. The Court reversed the judgment of the Third Circuit and remanded for further proceedings, holding that the case was not moot insofar as the complaint sought a declaratory judgment that the payment of welfare benefits to strikers is inconsistent with federal law. *Super Tire Engineering Company v. McCorkle*, 416 U.S. 115 (1974).

The matter was thereafter remanded to the District Court. Cross motions for summary judgment were

* The Attorney General of New Jersey represents only the two State officials. The county and municipal welfare officials have not participated actively in the litigation.

filed in the District Court and on April 29, 1976, the District Court issued a written opinion which concluded that the pertinent federal welfare statutes do not disquality strikers and their families from receiving welfare benefits for which they otherwise qualify. *Super Tire Engineering Company v. McCorkle*, 412 F. Supp. 192 (D.N.J. 1976) (Pet App. pp. 16a-27a).*

An appeal was then taken to the Third Circuit Court of Appeals, which affirmed. *Super Tire Engineering Company v. McCorkle*, 550 F.2d 903 (3rd Cir. 1977) (Pet. App. pp. 3a-14a). It concluded that insofar as the plaintiff's claim was predicated on federal labor law, it was foreclosed, pursuant to *Hicks v. Miranda*, 422 U.S. 332, 344 (1975), by the summary affirmance in *Kimbell, Inc. v. Employment Security Commission*, 429 U.S. 804 (1976). It also affirmed the conclusion of the District Court that families which include strikers are not automatically disqualified from receiving benefits under the program of Aid to Families with Dependent Children (42 U.S.C. §601, *et seq.*) (hereinafter "AFDC") if they are otherwise qualified. Finally, the Third Circuit refused to consider whether families which include strikers may receive benefits under the Aid to Needy Families with Dependent Children of Unemployed Fathers program (42 U.S.C. §607) (hereinafter "AFDC-UF"), since the New Jersey Legislature had repealed the enabling legislation for participation in this program, effective June 20, 1971. L. 1971, c. 210.**

* This notation refers to the appendix to the petition for writ of certiorari.

** After the Third Circuit issued its decision, the New Jersey Legislature enacted legislation to restore New Jersey's participation in the AFDC-UF program, effective July 1, 1977. L. 1977, c. 127.

ARGUMENT

The court should deny the Petition for a Writ of Certiorari, because the District Court and Court of Appeals correctly concluded that the provisions of the Social Security Act, which deal comprehensively with conditions of eligibility under the federal categorical assistance programs, do not prohibit the payment of welfare benefits to families which include strikers.

This petition seeks review of a final judgment of the Third Circuit Court of Appeals interpreting the provisions of the Social Security Act establishing the AFDC program, as they relate to the payment of benefits to families which include strikers, and the impact, if any, of the National Labor Relations Act (hereinafter "NLRA") upon the interpretation of those provisions.

The AFDC program provides financial aid on a joint federal-state basis for needy children who have been "deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent" and are living with any one of a specified group of relatives. 42 U.S.C. §606(a). See generally *King v. Smith*, 392 U.S. 309 (1968). As originally enacted, the benefits of the AFDC program were limited to needy children themselves. 49 Stat. 629 (1935). By a 1950 amendment, benefits also may be paid to meet the needs of the caretaker relative of a dependent child. 64 Stat. 551 (1950). Neither the original Act nor the 1950 amendment conditioned eligibility for AFDC benefits for either dependent children or their relatives on whether they were employed or available for work. The only criteria for eligibility were that (1) a dependent child had been deprived of the

support of a parent by virtue of death, disability or absence from the home, and (2) the need requirements set by the State had been met. In short, the availability of AFDC benefits revolves solely around the *needs* of eligible families.

Consistent with these objectives, there is no suggestion in the legislative history that Congress intended to establish any barrier to the receipt of benefits by families which include individuals who are on strike. While there was no specific discussion of this subject at the time of enactment of the original legislation, the problem was not one of which congressmen in the 1930s would have been unaware. It is clear that benefits had been paid to strikers under the Federal Emergency Relief Act of 1933, which was the immediate predecessor of the categorical assistance provisions of the Social Security Act (see Bureau of Social Science Research, Inc., Legislative History of the Aid to Dependent Children Program 12-16 (1970)), and that such payments had been the subject of considerable controversy during the period immediately preceding enactment of the Social Security Act. See A. Thieblot and R. Cowin, Welfare and Strikes: The Use of Public Funds to Support Strikers, 34-36 (1972). Furthermore, the Railroad Employment Insurance Act (45 U.S.C. §451, *et seq.*), enacted in 1933, provided compensation for strikers under specified conditions. 45 U.S.C. §354(a-2)(iii).

If Congress had desired to prohibit this practice under the categorical assistance provisions of the Social Security Act of 1935, it could easily have inserted a provision to this effect. Instead, it limited the conditions of eligibility to need alone. Similarly, if Congress had desired to prohibit payments to strikers under the Unemployment Compensation Act (42 U.S.C. §1304), also enacted in 1935, it could have done so. Instead, it elected to confer substantial discretion upon the states to determine their own conditions of eligibility. *Cf. Ohio Bureau of Employment Services v. Hodory*, 45 Law Week 4544, 4547-4549 (decided May 31, 1977). Finally, the NLRA, also enacted in 1935, established a comprehensive statutory code for industrial relations, but Congress was silent with respect to the payment of public funds to strikers. It thus appears that in enacting the NLRA, the Unemployment Compensation Act and the AFDC provisions of the Social Security Act in 1935, Congress had ample opportunity to enact a prohibition against the payment of public funds to strikers, but it refrained from doing so and thereby permitted such payments to be paid. A. Thieblot and R. Cowin, *supra* at 36-43.

The AFDC provisions of the Social Security Act were amended numerous times after 1935. See generally, Bureau of Social Science Research, Inc., *supra* at 89-267. Several of these amendments would have provided appropriate occasions for the insertion of a prohibition against the payment of welfare benefits to strikers if Congress had been so minded. In 1950, the benefits of the AFDC program, previously limited to needy, dependent children, were extended to the relatives caring for such children, thus making such benefits available to adults for the first time. Congress could have then enacted a prohibition against the payment of benefits to strikers but, consistent with its basic humanitarian objective to provide minimal support not just for dependent children but also their caretaker relatives (see Bureau of Social Science Research, Inc., *supra* at 159-160), the amendment was silent on the subject. In 1961,

the AFDC program, which previously had required as a condition of eligibility that one parent be dead, disabled or absent from the home, was extended to two-parent families in which the father was unemployed by the enactment of enabling legislation for what has come to be called the AFDC-UF program. See generally, *Batterton v. Francis*, 45 Law Week 4768 (decided June 20, 1977). This would have been an obvious occasion for Congress to address the subject of welfare benefits for strikers, since the 1961 amendment made federal categorical assistance benefits potentially available to a large number of labor organization members who theretofore would not have met the conditions for eligibility. But again, the amendment was silent on the subject. Finally, in 1967 Congress enacted a detailed set of amendments which require certain AFDC recipients to participate in work training programs and to seek employment. See generally, *New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973). Although this amendment added a provision requiring the states to disregard the needs of specified recipients who refuse without cause to accept employment, no similar exclusion was provided with respect to strikers. In short, despite continuous congressional reconsideration of the conditions for AFDC eligibility, no attempt was made prior to 1972 to exclude the families of strikers from the program.

The common understanding which has evolved during the course of the legislative history of the AFDC program, that strikers are eligible for its benefits, is also reflected in recent congressional action to enact a prohibition against the payment of such benefits. In 1972, the Nixon Administration introduced welfare reform legislation which, as reported out by the Senate Finance

Committee, contained an explicit provision to deny strikers benefits under the AFDC program. Senate Report No. 92-1230, 92nd Cong., 2d Sess. 108, 472-473 (1972). This proposal was debated on the Senate floor (118 Cong. Rec. 16815, 17049-17052) but was deleted before the bill was voted upon. *Id.* at 16815. In addition, three bills which sought to amend the Social Security Act to prohibit the payment of benefits to strikers under the AFDC-UF program were introduced in the House of Representatives in 1973, but they were not passed. H.R. 9422, 9748, 9903, 93d Cong., 1st Sess. (1973). Most significantly, an attempt to exclude strikers from the food stamp program, which is closely interrelated with the AFDC program (see 7 C.F.R. §271.3), was not only defeated, but resulted in the enactment of 7 U.S.C. §2014(c), which expressly provides:

> ". . . Refusal to work at a plan or site subject to a strike or a lockout for the duration of such strike or lockout shall not be deemed to be a refusal to accept employment."

Thus, the only recently enacted amendment concerning public aid to strikers was premised on the congressional view that government neutrality in labor disputes can only be maintained if strikers are afforded the same opportunity as nonstrikers to secure such benefits.

In short, it is clear not only from the face of the statute but also the pertinent legislative history that Congress did not intend to disqualify otherwise eligible families from participating in the AFDC program simply because a member of the family is out of work due to a strike. Rather, the only conditions for basic eligibility in the AFDC program are that (1) a dependent child has been deprived of the support of a parent by virtue

of death, disability or absence from the home, and (2) the need requirements set by the State have been met. 42 U.S.C. §606(a). If these conditions are satisfied, eligibility is established and benefits must be paid by the State. As the court noted in *Burns v. Alcala*, 420 U.S. 575, 578 (1975):

> "[F]ederal participation in state AFDC programs is conditioned on the State's offering benefits to all persons who are eligible under federal standards. The State must provide benefits to all individuals who meet the federal definition of 'dependent child' and who are 'needy' under state standards, unless they are excluded or aid is made optional by another provision of the Act."

Therefore, in view of the fact that the conditions of eligibility to receive AFDC benefits are comprehensively delineated by the Social Security Act, which in no way even suggests that eligibility to receive benefits turns on whether a recipient is on strike, the conclusion is inescapable that Congress has not prohibited strikers from receiving welfare benefits.

In urging that this case nevertheless presents an important question of federal law which needs to be settled by the Court, the petition for writ of certiorari engages in an extended discussion of the meaning of "unemployment" in the section of the statute governing the AFDC-UF program. 42 U.S.C. §607(a). However, the Court has issued a full-length opinion within the last week interpreting the meaning of "unemployment" in this section. *Batterton v. Francis, supra.* Therefore, it no longer can be said that this issue has not been addressed by the Court. Furthermore, even assuming there were a need for further interpretation of the meaning of "unemployment" in 42 U.S.C. §607(a), this case would not present a suitable context for such interpretation. As noted in the opinion of the Third Circuit, New Jersey withdrew from the AFDC-UF program in June of 1971. Accordingly, neither the District Court nor the Court of Appeals addressed themselves to the meaning of 42 U.S.C. §607(a). It is of course well established that this Court ordinarily will consider only issues which have been properly presented to and decided by the lower federal courts. *Tennessee v. Dunlap*, — U.S. —, 96 S.Ct. 2099, 2101 n.2 (1976). Therefore, this would be a peculiarly inappropriate case for the Court to consider any further question which may exist as to the meaning of 42 U.S.C. §607(a).

The recent decision in *Batterton v. Francis, supra*, also demonstrates that the petition does not present any other substantial federal question. In considering whether families which include strikers may be disqualified from receiving benefits under the AFDC-UF program, the Court looked solely to the provisions of the Social Security Act governing that program. This analysis strongly reinforces the conclusion that the Social Security Act provides an all inclusive, self-contained set of criteria for eligibility in the federal categorical assistance programs. The decision thereby negates the petitioners' claim that the federal labor laws impliedly impose additional grounds of eligibility by which welfare recipients who satisfy every condition of the Social Security Act still may be disqualified from receiving benefits. Therefore, insofar as the petition relies upon federal labor law, it is simply lacking in substance.

CONCLUSION

It is respectfully submitted that for the foregoing reasons the petition for writ of certiorari should be denied.

Respectfully submitted,

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